IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 3484 of 2005

1. Shri Baliram Laxman Bhandari
and another ..Petitioners

vs

1. Smt.Muktabai Budha Bhandari
and others ,.Respondents

Shri Dnyaneshwar Deshmukh for petitioners.

CORAM: A.P.SHAH J.
13th September,2005

P.C.

. Heard counsel for the petitioner.

. The challenge is to the order passed by the Trial Court rejecting the application to examine defendant no.2 on commission on the ground that no leave has been taken under Order 18 Rule 3-A of Code of Civil Procedure. It appears that defendant no.1 has examined himself and two other witnesses are also examined. Order 18 Rule 3-A forbids examination of a party after examination of witnesses unless leave is obtained from the Court. It appears that no such leave was sought prior to examination of witnesses. Therefore, application came to be rejected.

. It is settled law that Rule 3-A of Order 18 is directory in nature and only mandatory provision it

corporates is to the extent of obtaining permission of the Court. Normal rule laid down is that party wanting to examine himself should examine first before any witness is examined. This rule can be deviated only with a permission of the Court. Such permission of the Court, it is desirable, should be obtained before any witness is examined, but such is not a mandate. Such permission can be obtained even at a later stage. The rule, however, enjoins upon the court to indicate the reasons for the order permitting the party to be examined later.

. In my view, ends of justice would be served if the petitioner is given liberty to make an application for leave under order 18 Rule 3-A to the Trial Court. The petitioner shall be free to apply for leave under Order 18 Rule 3-A and if such application is made the Trial Court shall deal with the same in accordance with law and pass appropriate order after giving an opportunity of hearing to the other side. In case leave is granted the petitioner will be at liberty to revive the prayer for examination of defendant no.2 on commission.

. Petition is disposed of accordingly.